

Memorandum

To: Jackson County Officials

Date: February 11, 2020

Regarding Required Procedures and Possible Schedule for a Bond Referendum in November 2020

From: Sanford Holshouser LLP

This memorandum describes the steps required for Jackson County to conduct a general obligation bond referendum on November 3, 2020 and sets out a proposed schedule. Here are the required steps and suggested dates for action:

1. Determine tentative plan for bond purposes and amounts.

Although Step 2 provides for the first formal County Board action to determine what will be presented to the voters, you need to have a good idea of what the bond program will look like before we begin the formal process. In addition, the plan for the projects included in the bond package is something that LGC representatives will want to discuss with County representatives at the meeting described in Step 3. More information on developing the purposes and amounts of bonds to be proposed to the voters appears near the end of this memo.

2. Adopt Preliminary Board Resolution. As part of the application process, the LGC wants to see a statement from Board describing, briefly, why the proposed projects and bonds are desirable and affordable for the County. Our schedule shows this resolution being adopted at the County Board meeting on April 7.

3. **Meet with LGC staff.** The County should arrange a meeting with LGC staff as soon as County staff is ready for an informal discussion about the County's plans – including a discussion of how the County decided on the amounts and purposes of the bonds, the repayment plan, and how the bond projects relate to other County capital needs.

4. **Give Informal Notice to the County Board of Elections.** Because the Board of Elections will need to coordinate its own procedures for the bond referendum with the other November ballot items, it would help the Board of Elections to receive an email or phone call to inform the Board of the County's plans, even if the plans are subject to change. We need to ensure that our schedule works with the Board's schedule not only in terms of legal requirements but also with respect to practical matters such as ballot printing.

5. **Make Legislative Committee 45-day filing.** The County must notify a legislative committee of its plans to seek LGC approval for a borrowing. This committee has no role to approve or disapprove your borrowing; we just need to send in a notice. The statutes call for this filing to go in 45 days before the LGC considers your application. We as bond counsel can prepare and submit this notice, and we would plan to do that promptly after Step 2.

6. **Publish Notice of Intent To File Application.** The County must publish a notice of its intent to file an application for the LGC's approval of the proposed bonds. The notice must be published at least 10 days before filing the application. The notice should be published as soon as possible after the Board adopts the preliminary resolution from Step 2, and, in any case, by April 23 under the proposed schedule.

The preliminary resolution and the Notice of Intent establish the maximum amount of bonds that can be proposed at the referendum for each of the general purposes identified in the resolution and the Notice (such as, "Water Bonds"). From this point, we can delete purposes or decrease the amount of bonds for any purpose, but we can increase the amount for a purpose, or add a purpose (such as, "Public Safety Bonds"), only by re-starting the process.

7. Prepare Statement of Debt and Statement of Estimated Interest.

The debt statement sets out details of the County's outstanding debt. This document will be similar, but not quite identical, to a debt statement that appears in the LGC application. The statement of estimated interest states the County's good-faith, non-binding calculation of the total amount of interest to be paid on the bonds. These statements will be prepared as we are preparing the LGC application and the Bond Order documents. We will include information from these statements in some of the public notices related to the bond referendum.

8. File LGC Application. As stated above, this cannot happen until at least 10 days have passed from the publication of the notice of intent. The application needs to be filed and formally accepted by the LGC before we take the next step.

The statutes require only that the LGC "accept" your application before we move forward with the process. LGC "approval" will come somewhere down the line as convenient for the LGC, but we don't need to wait for that.

9. Introduce Bond Order; Set Public Hearing. After the County files its application, the Board needs to introduce the Bond Order and set a date for the required public hearing. We can take this action at any time after the LGC accepts the application (even the same day). Our schedule shows these steps occurring at the Board's May 5 meeting.

The "Bond Order" is the name given by our statutes to the key resolution the County Board needs to adopt as part of the bond referendum process. The Bond Order is short – less than a full page – and simply states the County Board's authorization of bonds in a maximum amount for a specified purpose, subject to voter approval, along with the County Board's pledge to raise taxes, if necessary, to provide for bond payments. We have attached a sample bond order for the authorization of recreational facilities bonds. There will be a separate bond order for each purpose for which bonds are to be proposed.

10. File Sworn Statement of Debt. This statement needs to be filed after the Bond Order is introduced but before the publication of the notice of public hearing (as described in the next step). We identified the preparation of this Statement in Step 7, but now it needs to be completed by the Finance Officer and filed with the Clerk.

11. Publish Notice of Public Hearing. We need to publish notice of the required public hearing at least six days prior to the hearing. To have the hearing at the June 2, meeting, we should publish by May 26 (but there's no reason not to do it promptly after the May 5 meeting).

12. Hold Public Hearing; Adopt Bond Order; Set Ballot Question and Referendum Date. Our schedule shows these steps occurring at the June 2 meeting. After holding a public hearing, the Board needs to adopt the Bond Order and adopt a resolution that formally sets the ballot question and the date for the referendum. The Clerk must then send a copy of the resolution to the County Board of Elections within three days after the County Board meeting.

[The Board can schedule the public hearing and final action for different meeting dates; we just need to coordinate our schedule with the ballot printing schedule.]

The adoption of one or more Bond Orders establishes the final list of purposes, and the amount of bonds for each purpose, that will go before the voters, although a Bond Order could potentially be amended prior to the date ballots are printed and the referendum notice is published.

13. Publish Bond Order as Adopted. This should be done as soon as convenient after the Bond Order is adopted. There is no set statutory deadline.

14. Publish Notice of Bond Referendum. This notice must be published twice, once not less than 14 days and once not less than 7 days before the close of voter registration. State law permits registration until the 25th day prior to the election date. That puts the date registration closes at October 9 for a referendum on November 3. The first publication, then, needs to be at least 14 days earlier, or on or before September 25, and the second publication no more than one week later (October 2). We would certainly encourage you, however, to publish as soon as convenient after the completion of Step 12, to leave room for a re-publication in the case of a publication error.

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The table on the last two pages of this package summarizes the steps.

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Formulating ballot questions. Each separate general purpose for bonds must be the subject of a separate ballot question. Purposes must be related to one another if they are to be included in a single ballot question; unrelated purposes cannot be combined. For example, a bond purpose of “public safety” could cover improvements to police and fire facilities. You could not, however, combine “fire facilities” and “park improvements” on a single ballot question.

The ballot questions themselves must follow a format set out in the statutes that provides for very brief questions. We have attached a sample of what a ballot question for what recreational facilities bonds might look like.

We recommend that the questions put to voters propose a dollar amount of bonds for broad categories, as appropriate – for example, a dollar amount for “school improvements.” Although the statutes allow the purposes to be stated with more specificity, we recommend that the purposes be left in more generalized categories, so that the voters understand what will be financed while leaving the County Board flexibility within the categories to respond to changing conditions.

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Issuing bonds after the referendum. Once the voters have approved the bonds, you usually have a minimum of 90 to 120 days to actually issue bonds and put money in the bank. The County Board must adopt a resolution to formally approve the election results, and the County must publish a notice of the results that triggers a 30-day period during which people can bring legal challenges to the bond referendum process. Then, to approve the issuance of bonds takes only one more County Board resolution, with no other required public hearings, published notices, or formal LGC approvals. The primary task in preparing for the bond issue is preparing an “official statement,” a prospectus-like document that provides information to prospective bond purchasers.

The significant timing issue in proceeding with a bond issue centers around the progress of the projects that are going to be financed. In general, the LGC wants you to have construction bids in hand representing at least a substantial amount of the amount borrowed (let's say at least 70%, as a guideline), and well-developed estimates for the remainder -- the LGC wants to be sure you don't borrow too much money, or too little money, or borrow it earlier than you need it. We can coordinate the bond financing process with your construction processes so as not to delay the County's projects, but the construction process drives the schedule.

The County has seven years from a successful referendum date to issue voter-approved bonds. The LGC can extend this period to ten years, and over the last several years the LGC has routinely granted extensions requested by local governments. There is never any obligation for the County in fact to issue any or all the bonds approved at a referendum.

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Please let us know if you have any questions about this information, or if we can be of any other assistance.

-- Sanford Holshouser LLP

Sample Bond Order for recreational facilities

**Bond Order Authorizing the Issuance of General Obligation Bonds for
Recreational Facilities in the Maximum Amount of \$_____**

WHEREAS --

The Board of Commissioners of Jackson County, North Carolina, has stated its proposal to issue general obligation bonds to pay capital costs of providing recreational facilities.

The County has applied to the North Carolina Local Government Commission for its approval of such bonds, and the Commission has accepted the County's application.

BE IT ORDERED by the Board of Commissioners of Jackson County, North Carolina, as follows:

1. There are hereby ordered to be issued general obligation bonds to pay capital costs of providing recreational facilities, including without limitation athletic fields, parks, playgrounds, recreation centers, shelters, stadiums, arenas, permanent and temporary stands, golf courses, swimming pools, wading pools, marinas, and lighting, buildings for recreation purposes and buildings for the administration of recreational programs, along with the acquisition of land and interests in land for these and related purposes, together with related financing and other necessary or incidental costs.

2. The maximum aggregate principal amount of the bonds issued for such purpose will be \$_____.

3. Taxes will be levied in an amount sufficient to pay the principal of and interest on the bonds so issued.

4. A sworn statement of debt prepared by the County's Finance Officer has been filed with the Clerk to this Board and is open to public inspection.

5. This Bond Order will take effect when approved by the County's voters in the manner provided by law.

Sample ballot question for recreational facilities bonds

JACKSON COUNTY

BONDS FOR RECREATIONAL FACILITIES

Shall the order authorizing Jackson County general obligation bonds in the maximum amount of \$_____ plus interest to pay capital costs of providing recreational facilities and paying related costs, and providing that additional taxes may be levied in an amount sufficient to pay the principal of and interest on the bonds, as adopted by the County's Board of Commissioners on June 2, 2020, be approved?

Yes ___

No ___

Jackson County -- Proposed Timetable for November Bond Referendum

Version of March 7, 2020

	<u>Event</u>	<u>Date</u>
1.	Determine tentative referendum plan	[Done]
2.	Board adopts preliminary resolution explaining purpose for issue and authorizing publication of notice of intent to file LGC application	At April 7 Board meeting
3.	Meet with LGC staff	As soon as convenient, can be before or after Event 2
4.	County gives informal notice to County Board of Elections	As soon as convenient after Event 2
5.	Bond counsel makes legislative committee 45-day filing	As soon as convenient after Event 2
6.	County publishes notice of intent to file application	As soon as possible after Event 2 and in any case by April 23
7.	County prepares statement of debt and statement of estimated interest	In connection with preparing LGC application

8.	County files LGC application	At least 10 days after Event 6 and before Event 9 (can be the same day)
9.	Board introduces bond order and schedules public hearing	At May 5 Board meeting
10.	Clerk files sworn statement of debt	Any time between Event 9 and Event 11
11.	County publishes notice of public hearing	By May 26 (after Event 10 and then at least six days prior to Event 12)
12.	County Board holds public hearing; adopts bond order; formally sets ballot question and referendum date	At June 9 Board meeting
13.	County publishes bond order as adopted	As soon as convenient after Event 12
14.	County publishes notice of referendum (twice)	By September 25; then by October 2 (recommended to publish as soon as convenient after Event 12)
15.	Referendum occurs	November 3